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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

As the Commission continues its review of the proposed joint venture between Comcast and NBC Universal (NBCU), I am writing to comment on the possible implications of the transaction for consumers, choice, investment and innovation. The expansive breadth of the combination of Comcast and NBCU has the potential to have a dramatic and durable impact on the media marketplace. Accordingly, the Commission's scrutiny of the transaction, consistent with its duty to ensure that it is in the public interest, is essential for a vibrant media ecosystem now and in the future.

The proposed Comcast-NBCU transaction would allow Comcast to acquire an unprecedented concentration of national programming assets, including such popular video content as the NBC television network, USA Network, CNBC, Syfy, MSNBC, and Bravo. The joint venture would give Comcast the power, should it choose to exercise it, to deny programming to its cable, satellite, or online competitors or charge inflated prices for it. If that were to happen, consumers would suffer from both fewer choices and higher rates for NBC owned and operated local television station signals, Comcast regional sports networks, and the suite of NBC-Universal's national cable programming. To address this possibility, the FCC should protect consumers by requiring arbitration and standstill mechanisms for Comcast-NBCU's broadcast and national cable programming, as it has done previously for regional sports programming.

In addition to program access, program carriage is another issue that merits your close attention as it has a significant impact on the diversity of voices, particularly in news and information, which has long been a focus of mine. As proposed, the new Comcast-NBCU entity would have the ability to harm independent networks, particularly those that compete against Comcast-owned channels, by refusing to carry them on reasonable terms or by affording them channel placement that seriously impedes their ability to attract an audience. To protect against such harms, the Commission should adopt general conditions to safeguard independent programmers. In the critical area of news and information, the FCC should specifically look to ensure that independent news programmers are able to compete on a level playing field by being carried on the same tier as news programming owned by Comcast and placed in the same general neighborhoods as news programming owned by Comcast. These conditions are critical for the FCC to mitigate against potential harm to program diversity in the post-joint venture environment.

The proposed transaction also increases the likelihood that Comcast could raise the price for stand-alone broadband service to incent consumers to choose its bundled cable and broadband offering. With consumers increasingly utilizing their broadband connections to access video content online, control of both the content and the conduit through which it is delivered would provide Comcast the ability to make "cutting the cord" less financially attractive to consumers, undermining competition and choice. The nascent online video market offers the potential to spur innovation and promote diversity and creativity in video content production, and it should be encouraged to flourish in the future. Stifling the rise of online video would thwart Commission efforts to increase broadband adoption consistent with the National Broadband Plan. Accordingly, a merged Comcast-NBCU should be prohibited from favoring or blocking access to lawful content pursuant to the Commission's Internet Policy Statement adopted on August 5, 2005.

The Commission also should address merger-specific, potential public interest harms posed by the transaction. In doing so, the Commission should learn from experience. For instance, the stand-alone broadband condition requiring a low retail rate previously imposed as part of the AT&T-BellSouth merger has largely failed as an effective remedy. In sharp contrast, the wholesale broadband access condition adopted for the AOL-Time Warner merger has been an unqualified success, offering consumers both much-needed marketplace choice and lower prices. The Commission should choose to replicate successful remedies whenever possible, and I strongly urge the Commission to impose stand-alone broadband conditions similar to that adopted for AOL-Time Warner if it decides to approve the merger.

The proposed Comcast-NBCU joint venture represents a monumental moment in the history of the media marketplace. The consequences of this transaction, should it be approved or conditioned, will reverberate for years to come. As a result, the FCC should ensure that the joint venture would serve the public interest and promote a robust, diverse media environment for consumers, innovators, our economy and our democracy as a whole.

Sincerely,

Edward J. Markey

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